

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

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COMMUNICATION SERVICE FOR THE : CIV. 10-4134
DEAF, INC., :

Plaintiff, :

vs. :

THIRD-PARTY COMPLAINT

FIRST ADMINISTRATORS, INC., :
RMTS, L.L.C., and GERBER LIFE :
INSURANCE COMPANY :

Defendants. :

and :

FIRST ADMINISTRATORS, INC., :

Third-Party Plaintiff, :

vs. :

HAAKE COMPANIES, A MARSH & :
MCCLELLAN AGENCY LLC COMPANY, :

Third-Party Defendant.

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Defendant and Third-Party Plaintiff, First Administrators, Inc. ("FAI"), for its
Third-Party Complaint, states and alleges as follows:

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1. Plaintiff, Communication Service for the Deaf, Inc. ("CSD"), is organized under the laws of South Dakota and has its principal places of business in Sioux Falls, South Dakota.
2. Defendant and Third-Party Plaintiff, FAI, is an Iowa corporation with its principal place of business at 1331 Grand Avenue, Des Moines, Iowa.
3. Upon information and belief, Third-Party Defendant, Haake Companies, a Marsh & McLellan Agency LLC company ("Haake"), is a citizen of states other than South Dakota and Iowa.
4. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.
5. The district court has subject matter jurisdiction of the claims alleged in third-party complaint under 28 U.S.C. §§1332 and 1367.
6. Upon information and belief, Haake is successor in interest to Haake Companies, Haake Insurance Agency and/or Haake Benefits Consulting Group.
7. FAI previously served as Benefit Services Administrator for CSD's employee benefit plan.
8. CSD has asserted breach of contract, negligence, and breach of fiduciary claims against FAI, alleging, inter alia, that FAI failed to obtain adequate stop loss insurance coverage for CSD and failed to properly complete stop loss disclosure forms.

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A true and correct copy of CSD's Amended Complaint against FAI is attached hereto as Exhibit 1.

9. FAI has answered CSD's Amended Complaint, denying any liability. FAI incorporates by reference all affirmative defenses set forth in its Answer.

10. Haake is a benefits consultant.

11. At all relevant times, CSD employed the services of Haake to evaluate and structure its employee welfare benefit program.

12. Upon information and belief, the services that Haake provided to CSD or should have provided to CSD include, but are not limited to, advice regarding the termination of CSD's benefit plan, advice regarding the termination of CSD's agreement with FAI, and advice regarding stop loss insurance coverage.

13. Haake failed to give CSD advice that was within the scope of the services Haake provided or should have provided to CSD.

14. As a result of Haake's failure, CSD was damaged.

15. If FAI is found liable to CSD, which liability is specifically disputed and denied, then, and in that event, FAI would be entitled to complete indemnification from Third-Party Defendant Haake due to an absence of proportionate fault and because FAI would be discharging a liability that equitably should be discharged by Haake.

16. In the alternative, if CSD recovers against FAI, which right to recovery is specifically denied and disputed, then, and in that event, FAI's liability would be


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disproportionate to Third-Party Defendant Haake's liability and the relative degrees of liability should therefore be determined and FAI should be awarded contribution from Haake.

WHEREFORE, Defendant and Third-Party Plaintiff First Administrators, Inc. prays, if CSD is awarded judgment against FAI, that FAI be awarded indemnity and/or contribution from Third-Party Defendant Haake Companies, a Marsh & McLellan Agency LLC company; that FAI be awarded its costs and disbursements; and for such other and further relief as the Court deems just and equitable.

Dated this 5th day of March, 2012.

WOODS, FULLER, SHULTZ & SMITH P.C.

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